

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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GC Docket No. 92-52

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of:

Reexamination of the Policy)
Statement on Comparative)
Broadcast Hearings)

RM-7739
RM-7740
RM-7741

To: The Commission

COMMENTS

Barbara D. Marmet ("Marmet"), permittee of WAFY(FM), 103.1 MHz, Middletown, Maryland, by her attorney, submits the following comments in response to the "Second Further Notice of Proposed Rulemaking" in the above-referenced rulemaking proceeding. In support, the following is shown:

1. By way of introduction, it should be pointed out that Marmet received an initial grant of construction permit in 1988, went on the air in May 1990, and has been operating 24 hours a day ever since. The grant of construction permit has never become final because of appeals taken by J. Thomas Lamprecht ("Lamprecht").¹ The case was last remanded to the

¹ Lamprecht v. FCC, Case No. 88-1395, remanded to the FCC, 958 F.2d 382 (D.C. Cir. 1992); Lamprecht v. FCC, Case No. 92-1586 (D.C. Cir.), remanded to FCC by Order filed February 9, 1994.

Federal Communications Commission as a result of the decision of the U.S. Court of Appeals for the D.C. Circuit in the case of Bechtel v. FCC, 10 F.3d 875 (D.C. Cir. 1993).

2. The latest remand in the Middletown proceeding² was by the panel of the U.S. Court of Appeals for the D.C. Circuit scheduled to hear oral argument on January 28, 1994, even though Appellant Lamprecht and Intervenor Marmet filed comments with the Court stating that there was no need for a remand. The Court thought there was, presumably because of the comments by the Federal Communications Commission ("Commission") that the case was to be reviewed on the basis of the criteria used in comparative proceedings. However, the Commission should understand that Lamprecht and Marmet are individual owners who both proposed to be integrated full-time as General Manager. WAFY's owner, Barbara D. Marmet, has been so integrated since receiving the original permit.

3. As integration was not a difference between the two applicants, other bases served as the

² MM Docket Nos. 83-985, 83-987. Marmet tendered her original application on September 8, 1982. Thus, the Middletown, Maryland, proceeding is one of the oldest initial licensing proceedings pending before the Commission. The last Commission decision in the Middletown proceeding was adopted September 18, 1992, Jerome Thomas Lamprecht, 7 FCC Rcd. 6794 (Released October 15, 1992).

distinguishing differences. Lamprecht has never lived in Frederick County, Maryland, or anywhere near the service area of the station. He was not active in civic and local affairs in that proposed service area. He did not propose to install auxiliary power at the transmitter or at the studio. What he had, as of the cutoff date for comparative consideration, was some broadcast experience. Since receiving her grant in 1988, Barbara Marmet has accumulated far more broadcast experience as General Manager, in the actual area to be served, than Lamprecht demonstrated, in a management capacity, as of the cutoff date, February 3, 1983.

4. Marmet believes that the Court decision in Bechtel did not invalidate integration as such, but only as it has been applied by some and skewed by others.³ It is respectfully submitted that integrated owners provide the best opportunity for service to the public. This Commission can comply with the Bechtel decision by substantiating and retaining its long-standing concept of the benefits of integration, by making certain refinements in how it is applied. For

³ In certain respects, the Court in Bechtel was simply faulting the Commission for its failure to give fair consideration to Susan Bechtel's arguments that, even though she proposed no integration, she would better serve the public interest than her opponents who proposed full-time integration. Thus, the Court's criticism of the FCC processes could be interpreted as concerning the agency's failure to accord Mrs. Bechtel her due Ashbacker hearing rights.

example, the Commission should retain integration, but give credit only where those who would be integrated full-time commit to at least five years after receiving a grant. This is the prevailing license term for television broadcast stations. Further, the Court criticized the Commission on the concept of limited partnerships and non-voting stock in applicants where only the legal ownership has been examined. The Commission should look to beneficial ownership as well as legal ownership in its analysis of integration. This is especially true in limited partnerships.

5. The combination of local residence and civic activity of the owners of the broadcast applicant provides one of the most sound reasons that the public interest will be served. Local residence, as well as civic participation of owners, provides the best basis for ensuring these ends. This is true even if there were no integration. However, when combined with integration, it gives a more hands-on approach to ensuring that the public interest will be served.

6. Broadcast experience has long been viewed by the Commission as a relatively unimportant factor in analyzing the qualifications of applicants. While it is certainly desirable, the Commission has always recognized that the lack of it can be cured with operational experience. There appears to be no need to

change the weight that has been allocated to broadcast experience, nor to the enhancement received where it has been in the area to be served. ⁴

7. We find no fault with the weight assigned to various comparative factors in past Commission decisions. The comparative factors all assume that there are no other broadcast interests and that therefore the Commission is looking only to determine the best practicable service to the public. The analysis by the Commission in previous cases, all of which have withstood appellate review, seems to be the best one for the needs of the public.

8. To summarize, the best practicable service to the public can be assured by the local residents, who are active in civic affairs, and who propose to be integrated on a full-time basis for at least five years from the inception of operation. Broadcast experience is especially valuable if it has been obtained in the area to be served. While not a comparative factor, as such, the Commission's reliance on auxiliary power both at the studio and at the transmitter, ensures that the best practicable service

⁴ As the Commission recognized in its notice, minority status cannot be altered because it is a matter of statute, passed annually by Congress. Therefore, no comments will be submitted on this.

will be maintained during emergencies and power outages. This enhancement should be retained, also.

9. In paragraph 8 of its notice, the Commission asked what proceedings should apply to pending cases. It is submitted that all applicants in pending cases before the Commission should be permitted to amend their applications no later than 30 days from the date of finality of new standards to be adopted by the Commission in this proceeding. Further evidentiary hearings would be appropriate where the existing record is so old as to be irrelevant to current conditions. If the so-called B Cutoff Date is more than 10 years old, the Commission may require an application to be amended and require further evidentiary hearings. This is best handled on a case-by-case basis.

10. In paragraph 9 of its notice the Commission states that it would welcome comments on how the proposed revisions of the comparative analysis could be structured to satisfy the kind of concerns which resulted in a determination that integration was arbitrary and capricious, as decided in the Bechtel case. The answer to this has been already alluded to. Integration should be retained, but the Commission should look to beneficial as well as legal ownership in an applicant, and the Commission should require that, in order to obtain credit, the ownership should be

integrated for a five-year commitment from the commencement of operation. In summary, it is the combination of who is actually putting up the money for the interest (beneficial ownership) plus the meaningful commitment to hold and operate the facility as an owner for a stated length of time that overcomes the fault found by the Court in the Bechtel case.

Respectfully Submitted,

BARBARA D. MARMET

by Harold K. McCombs, Jr.
Harold K. McCombs, Jr.

Her Attorney

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Duncan, Weinberg, Miller & Pembroke, P.C.
1615 M Street, N.W.
Suite 800
Washington, D.C. 20036
202-467-6370
FAX: 202-467-6379

CERTIFICATE OF SERVICE

I, Harold K. McCombs, Jr., do hereby certify
that I have caused to be served by mail, First Class
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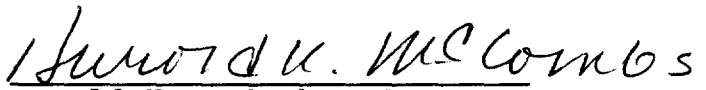
R. Hewitt Pate, Esquire
Robert R. Merhige, IV, Esquire
Hunton & Williams
951 East Byrd Street
Richmond, Virginia 23219-4074

Counsel for J. Thomas Lamprecht

Michael A. Carvin, Esquire
Shaw, Pittman, Potts & Trowbridge
2300 N Street, N.W.
Washington, D.C. 20037

Counsel for J. Thomas Lamprecht

- * John I. Riffer, Associate General
Counsel - Adjudication
Office of General Counsel
Federal Communications Commission
Room 610
1919 M Street, N.W.
Washington, D.C. 20554
- * Charles Dziedzic, Chief
Hearing Branch
Mass Media Bureau
Federal Communications Commission
Room 7212
2025 M Street, N.W.
Washington, D.C. 20554


Harold K. McCombs, Jr.

* By Hand